

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Reginald Saivon Nance,)	C/A No. 0:20-3795-JMC-PJG
)	
Plaintiff,)	
)	
v.)	ORDER REGARDING
)	AMENDMENT OF COMPLAINT
Kirkland Correctional Institution; Brian Sterling (SCDC); Medical Director April Clark,)	
)	
)	
Defendants.)	
)	

Plaintiff Reginald Saivon Nance, a self-represented state prisoner, brings this civil rights action pursuant to 42 U.S.C. § 1983. The Complaint has been filed pursuant to 28 U.S.C. § 1915A. This matter is before the court pursuant to 28 U.S.C. § 636(b) and Local Civil Rule 73.02(B)(2) (D.S.C.). Having reviewed the Complaint in accordance with applicable law, the court finds this action is subject to summary dismissal if Plaintiff does not amend the Complaint to cure the deficiencies identified herein.

I. Factual and Procedural Background

Plaintiff is an inmate in the Kirkland Reception and Evaluation Center (“Kirkland”) of the South Carolina Department of Corrections. Plaintiff brings this civil rights action pursuant to 42 U.S.C. § 1983 seeking damages and alleging that he was only supposed to be housed at Kirkland for sixty to ninety days, but he has been there since February 25, 2020. Plaintiff claims that he is being neglected because of his extended stay at Kirkland. Plaintiff indicates that neglect is evidenced by Kirkland’s lack of a canteen, Plaintiff’s inability to talk to his family every day, the Kirkland staff’s failure to respond to Plaintiff’s requests for medical attention, and Plaintiff’s contraction of COVID-19.

II. Discussion

A. Standard of Review

Under established local procedure in this judicial district, a careful review has been made of the *pro se* Complaint pursuant to the procedural provisions of 28 U.S.C. § 1915A and the Prison Litigation Reform Act (“PLRA”), Pub. L. No. 104-134, 110 Stat. 1321 (1996), which requires the court to review a complaint filed by a prisoner that seeks redress from a governmental entity or officer or employee of a governmental entity. See McLean v. United States, 566 F.3d 391 (4th Cir. 2009). Section 1915A requires a district court to dismiss the case upon a finding that the action is frivolous, malicious, fails to state a claim on which relief may be granted, or seeks monetary relief against a defendant who is immune from such relief. 28 U.S.C. § 1915A(b).

To state a claim upon which relief can be granted, the plaintiff must do more than make mere conclusory statements. See Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009); Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007). Rather, the complaint must contain sufficient factual matter, accepted as true, to state a claim that is plausible on its face. Iqbal, 556 U.S. at 678; Twombly, 550 U.S. at 570. The reviewing court need only accept as true the complaint’s factual allegations, not its legal conclusions. Iqbal, 556 U.S. at 678; Twombly, 550 U.S. at 555.

This court is required to liberally construe *pro se* complaints, which are held to a less stringent standard than those drafted by attorneys. Erickson v. Pardus, 551 U.S. 89, 94 (2007); King v. Rubenstein, 825 F.3d 206, 214 (4th Cir. 2016). Nonetheless, the requirement of liberal construction does not mean that the court can ignore a clear failure in the pleading to allege facts which set forth a claim cognizable in a federal district court. See Weller v. Dep’t of Soc. Servs., 901 F.2d 387 (4th Cir. 1990); see also Ashcroft v. Iqbal, 556 U.S. 662, 684 (2009) (outlining pleading requirements under Rule 8 of the Federal Rules of Civil Procedure for “all civil actions”).

B. Analysis

The Complaint is filed pursuant to 42 U.S.C. § 1983, which “ ‘is not itself a source of substantive rights,’ but merely provides ‘a method for vindicating federal rights elsewhere conferred.’ ” Albright v. Oliver, 510 U.S. 266, 271 (1994) (quoting Baker v. McCollan, 443 U.S. 137, 144 n.3 (1979)). To state a claim under § 1983, a plaintiff must allege: (1) that a right secured by the Constitution or laws of the United States was violated, and (2) that the alleged violation was committed by a person acting under the color of state law. West v. Atkins, 487 U.S. 42, 48 (1988).

However, Defendant “Kirkland Correctional Institution” is not a “person” amenable to suit pursuant to § 1983. See Monell v. Dep’t of Soc. Servs., 436 U.S. 658, 694 (1978) (noting that for purposes of § 1983 a “person” includes individuals and “bodies politic and corporate”); see, e.g., Harden v. Green, 27 F. App’x 173, 178 (4th Cir. 2001) (“The medical department of a prison may not be sued, because it is not a person within the meaning of § 1983.”). Kirkland Correctional Institution is a building or facility, but not a corporate body capable of being sued. See, e.g., Nelson v. Lexington Cty. Det. Ctr., C/A No. 8:10-2988-JMC, 2011 WL 2066551, at *1 (D.S.C. May 26, 2011) (finding that the plaintiff failed to establish that the Lexington County Detention Center, “as a building and not a person, is amenable to suit under § 1983”); see also Brooks v. Pembroke City Jail, 722 F. Supp. 1294, 1301 (E.D.N.C. 1989) (“Claims under § 1983 are directed at ‘persons’ and the jail is not a person amenable to suit.”). Therefore, Defendant Kirkland Correctional Institution is subject to summary dismissal for failure to state a claim upon which relief can be granted.¹

¹ To the extent Plaintiff complains about being housed at Kirkland, prisoners do not have a constitutional right to be housed at a specific facility. See Meachum v. Fano, 427 U.S. 215, 224 (1976).

As to Defendants Brian Sterling and April Clark, Plaintiff fails to provide any facts about these individual defendants that would show that they were personally involved with any of Plaintiff's legal claims. See Iqbal, 556 U.S. at 676 (providing that a plaintiff in a § 1983 action must plead that the defendant, through his own individual actions, violated the Constitution); Wright v. Collins, 766 F.2d 841, 850 (4th Cir. 1985) ("In order for an individual to be liable under § 1983, it must be 'affirmatively shown that the official charged acted personally in the deprivation of the plaintiff's rights. The doctrine of *respondeat superior* has no application under this section.' ") (quoting Vinnedge v. Gibbs, 550 F.2d 926, 928 (4th Cir. 1977)). Because Plaintiff does not explain how Sterling and Clark were involved in the purported violation of Plaintiff's rights, Plaintiff fails to meet the federal pleading standards. See Fed. R. Civ. P. 8 (requiring that a pleading contain "a short and plain statement of the claim showing that the pleader is entitled to relief"); Iqbal, 556 U.S. at 678 (stating Federal Rule of Civil Procedure 8 does not require detailed factual allegations, but it requires more than a plain accusation that the defendant unlawfully harmed the plaintiff, devoid of factual support).

Moreover, to the extent Plaintiff asserts that the defendants were deliberately indifferent to his conditions of confinement—such as Plaintiff's medical care or canteen and phone privileges—Plaintiff fails to state a claim upon which relief can be granted. As to the purported lack of medical care, Plaintiff fails to explain what medical condition was ignored by the defendants, whether the defendants were informed of his condition, or how Plaintiff was injured. See generally Farmer v. Brennan, 511 U.S. 825, 834 (1994) (stating that to proceed with a claim that prison officials were deliberate indifferent to a prisoner's needs in violation of the Eighth Amendment, the plaintiff must demonstrate: (1) objectively, the deprivation suffered or injury inflicted was "sufficiently serious," and (2) subjectively, the prison officials acted with a "sufficiently culpable state of

mind.”); Anderson v. Kingsley, 877 F.3d 539 (4th Cir. 2017) (“In sum, the ‘deliberate indifference’ defined by Farmer may be characterized by three components: (1) the subjective knowledge of a substantial risk of serious harm; (2) the conscious disregard of that risk; and (3) the absence of intent to cause the harm risked. More concisely, Farmer defines deliberate indifference as the *intentional* taking of a risk that the defendant knows *might cause harm* while *lacking any intent to cause such harm*.”).² Additionally, Plaintiff’s allegations that he cannot speak to his family and has no access to a canteen fail to plausibly state a claim for a constitutional violation that is redressable under § 1983. See generally Fowler v. Graham, 478 F. Supp. 90, 93 (D.S.C. 1979) (no right to unlimited telephone use); Bennett v. Cannon, No. C/A No. 2:05-2634-GR, 2006 WL 2345983, at *2 (D.S.C. Aug. 10, 2006) (no right to canteen privileges).

Consequently, Plaintiff’s Complaint is subject to summary dismissal pursuant to 28 U.S.C. § 1915A(b)(1) for failure to state a claim upon which relief can be granted. Plaintiff is hereby granted **twenty-one (21) days** from the date this order is entered (plus three days for mail time) to file an **amended complaint** pursuant to Federal Rule of Civil Procedure 15(a) that corrects the

² To the extent Plaintiff asserts that the defendants were deliberately indifferent to his risk of contracting COVID-19 or to his illness once he contracted it, Plaintiff already has a pending case in this court that raises the same issue. Nance v. Kirkland R&E Ctr., C/A No. 20-2675-JMC; Cottle v. Bell, 229 F.3d 1142 (4th Cir. 2000) (“Because district courts are not required to entertain duplicative or redundant lawsuits, they may dismiss such suits as frivolous pursuant to § 1915(e).”) (citing Aziz v. Burrows, 976 F.2d 1158, 1158 (8th Cir. 1992)).

deficiencies identified above.³ If Plaintiff fails to file an amended complaint that corrects those deficiencies, this action will be recommended for summary dismissal pursuant to 28 U.S.C. § 1915A.

IT IS SO ORDERED.

December 10, 2020
Columbia, South Carolina


Paige J. Gossett
UNITED STATES MAGISTRATE JUDGE

Plaintiff's attention is directed to the important WARNING on the following page.

³ Any amended complaint filed by Plaintiff is also subject to further initial review by the court pursuant to 28 U.S.C. § 1915A. Further, Plaintiff is reminded that an amended complaint replaces the original complaint and should be complete in itself. See Young v. City of Mount Ranier, 238 F.3d 567, 572 (4th Cir. 2001) (“As a general rule, an amended pleading ordinarily supersedes the original and renders it of no legal effect.”) (citation and internal quotation marks omitted); see also 6 Charles Alan Wright et al., Federal Practice and Procedure § 1476 (3d ed. 2017) (“A pleading that has been amended under Rule 15(a) supersedes the pleading it modifies and remains in effect throughout the action unless it subsequently is modified. Once an amended pleading is interposed, the original pleading no longer performs any function in the case . . .”).

IMPORTANT INFORMATION . . . PLEASE READ CAREFULLY

WARNING TO PRO SE PARTY OR NONPARTY FILERS

ALL DOCUMENTS THAT YOU FILE WITH THE COURT WILL BE AVAILABLE TO THE PUBLIC ON THE INTERNET THROUGH PACER (PUBLIC ACCESS TO COURT ELECTRONIC RECORDS) AND THE COURT'S ELECTRONIC CASE FILING SYSTEM. **CERTAIN *PERSONAL IDENTIFYING INFORMATION* SHOULD NOT BE INCLUDED IN, OR SHOULD BE REMOVED FROM, ALL DOCUMENTS BEFORE YOU SUBMIT THE DOCUMENTS TO THE COURT FOR FILING.**

Rule 5.2 of the Federal Rules of Civil Procedure provides for privacy protection of electronic or paper filings made with the court. Rule 5.2 applies to **ALL** documents submitted for filing, including pleadings, exhibits to pleadings, discovery responses, and any other document submitted by any party or nonparty for filing. Unless otherwise ordered by the court, a party or nonparty filer should not put certain types of an individual's personal identifying information in documents submitted for filing to any United States District Court. If it is necessary to file a document that already contains personal identifying information, the personal identifying information should be "**blacked out**" or **redacted** prior to submitting the document to the Clerk of Court for filing. A person filing any document containing their own personal identifying information **waives** the protection of Rule 5.2(a) by filing the information without redaction and not under seal.

1. Personal information protected by Rule 5.2(a):

(a) Social Security and Taxpayer identification numbers. If an individual's social security number or a taxpayer identification number must be included in a document, the filer may include only the last four digits of that number.

(b) Names of Minor Children. If the involvement of a minor child must be mentioned, the filer may include only the initials of that child.

(c) Dates of Birth. If an individual's date of birth must be included in a document, the filer may include only the year of birth.

(d) Financial Account Numbers. If financial account numbers are relevant, the filer may include only the last four digits of these numbers.

2. Protection of other sensitive personal information – such as driver's license numbers and alien registration numbers – may be sought under Rule 5.2(d) (filings made under seal) and (e) (protective orders).